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MONTANA LEGISLATIVE HISTORY

Chapter 719 19 85

Bill H _____ S 116 Original bill & history ___C

H. Committee on Judiciary		S. Committee on Local Government	
Hearing Date(s) Mar 25	✓C	Hearing Date(s) Jan 24	✓C
Mar 27	✓C	Feb 22	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 27	✓C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

CHAIRMAN--FULLER, DAVE
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: TU-TH-SAT TIME: 12:30-2:30 P.M.
SECRETARY-GHILARDI, CHERYL

--BILL NO---	REFER DATE--	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0094	1/11	1/17	1/22	PASS AS AMENDED		
MCCALLUM, GEORGE			TERMINATES APPOINTMENT TO VACANT ELECTIVE OFFICE AS OF NEXT GENERAL ELECTION			
SB0102	1/14	1/22		DO PASS		
BLAYLOCK, CHET			REVISE DOCUMENTATION OF CLAIMS AGAINST A MUNICIPALITY			
SB0116	1/15	1/24	2/07 2/22	PASS AS AMENDED		
AKLESTAD, GARY C.			REVISING PAY STRUCTURE FOR PROSECUTING ATTORNEYS AND PROVIDING FUNDING			
SB0118	1/15	1/22	2/21	PASS AS AMENDED		
MCCALLUM, GEORGE			INCREASE SALARY OF CLERK AND RECORDER WHO SERVES AS ELECTION ADMINISTRATOR			
SB0126	1/16	1/29		DO PASS		
MCCALLUM, GEORGE			COUNTY BUDGET REVISION; BUDGET CLASSES			
SB0127	1/18	1/31	2/05 2/07	ADVERSE REPORT		
BROWN, BOB			ALLOCATING PART OF FOREST RESERVE MONEY FOR CITY OR TOWN STREETS			
SB0130	1/18	1/29	2/07 2/12	PASS AS AMENDED		
HARDING, ETHEL M.			PROVIDING STANDARD NOTICE PROVISIONS FOR LOCAL GOV. EXCEPT CITIES AND TOWNS			
SB0140	1/18	1/29	1/31 2/05	PASS AS AMENDED		
CHRISTIAENS,B.F. CHRIS			INCREASING COUNTY DEBT WITHOUT A VOTE TO $500,000			
SB0142	1/19	2/05	2/14	PASS AS AMENDED		
HALLIGAN, MIKE			INCREASING LIGHT VEHICLE FEES - USING INCREASE FOR DISTRICT COURTS			
SB0160	1/18	1/31		PASS AS AMENDED		
FULLER, DAVID E.			MUNICIPAL BUDGET REVISION; BUDGET CLASSES			
SB0163	1/19	1/31		DO PASS		
HARDING, ETHEL M.			DELETE DEPARTMENT OF COMMERCE SAMPLE PETITIONS FOR MUNICIPALITIES			

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

January 24, 1985

The sixth meeting of the Local Government Committee was called to order at 1:00 p.m. on January 24, 1985 by Chairman Dave Fuller in Room 405 of the Capitol Building.

ROLL CALL: All members were present with the exception of Senators Story and Mohar, who were excused.

CONSIDERATION OF SENATE BILL 116: Senator Gary Aklestad, District #6, is the sponsor of this bill. It was introduced to revise the pay structure for prosecuting attorneys, adjust the salary of part-time county attorneys, require the state to pay one-half of the salaries of authorized deputy county attorneys, and provide funding by imposing a charge on persons convicted of criminal offenses or who forfeit bond or bail.

PROPONENTS

A letter of support was submitted by James Nelson, Glacier County Attorney. The letter is attached as Exhibit A to these minutes.

John Pratt, representing the Montana County Attorneys' Association, spoke in favor of the bill. He stated that the prime purpose of the bill is to insure the quality of prosecutors in the State of Montana. He stated both the Attorney General and the Governor had indicated their support of the bill if they could provide a funding mechanism for the bill.

Robert Deschamps III, Missoula County Attorney, spoke in favor of the bill. He stated that the State of Montana has lost thirty-four county attorneys in the past year due to inaccurate salaries. Mr. Deschamps passed out a report entitled Prosecution Services in Montana which is attached as Exhibit B to these minutes.

Rae Kalbfleisch, Toole County Attorney, spoke in favor of the bill. He stated the bill would increase the experience and professionalism of county attorneys.

W.G. Gilbert III, Beaverhead County Attorney, spoke in favor of the bill. He stated that the funding mechanism for the bill is particularly attractive, and experience is necessary for a county attorney to be effective.

Bob McCarthy, Butte Silver Bow County Attorney, spoke in favor of the bill. His written testimony is attached as Exhibit C to these minutes.

Ed Laws, Stillwater County Attorney, spoke in favor of the bill. He explained the various types of cases that county attorneys must handle. He said lawyers representing the other side in cases often make five times as much money as the county attorney. He said that conflicts of interest limit private practice tremendously for part time County Attorneys.

John Connor, Jefferson County Attorney, spoke in favor of the bill. He stated the funding mechanism is in the bill and it would be a tremendous asset if the bill were to pass.

John Potter, Meagher County Attorney, spoke in favor of the bill. His written testimony is attached as Exhibit D to these minutes.

Jim McCann, Roosevelt County Attorney, stated he was in favor of the bill.

Gary Higgins, Golden Valley County Attorney, stated he was in favor of the bill.

John Flynn, Broadwater County Attorney, spoke in favor of the bill. He said local governments put a large amount of money into training their attorneys and they subsequently leave due to low salaries.

Joe Roberts, representing the Department of Justice, stated the Department was in favor of the bill.

OPPONENTS

Bill Verwolf, representing the City of Helena, stated that, while they were not opposed to the bill in its total context, they had concerns about trying to collect the fees from the criminal. He would like to see police courts removed from the bill.

Jim Jensen, representing the Montana Magistrates' Association, spoke in opposition to the bill. He feels the philosophy of the bill is that courts are for the purpose of generating revenue rather than being neutral places where disputes are resolved. He stated it cannot be determined who is to receive the money collected by the courts as it is now and the clerks in Justice of the Peace courts have an overwhelming burden trying to collect revenues and properly distribute them. He feels the bill establishes a specific dependence on the judge of the court.

Questions from the Committee were called for.

Senator Crippen asked Mr. Verwolf how much a full time city attorney's salary is. Mr. Verwolf stated they have two attorneys and they pay the two of them thirty thousand dollars a year combined.

Senator Pinsoneault asked if this type of funding was unique or if other states fund any costs in this manner. Mr. Deschamps stated that some other states do use this method of funding and that the State of Montana funds various law enforcement functions in this manner.

Senator Regan asked if they could not get help from the Attorney General's office. Mr. Racicot stated that they could but that they are also billed approximately thirty dollars an hour for services rendered.

Senator McCallum asked if a person would be entitled to an increase of one thousand dollars a year after completing four years or on their anniversary date. Mr. Deschamps stated the bill was intended to mean that a person would have to serve for four years before being eligible for the one thousand dollars -- if you were not reelected, you would not get the one thousand dollars. Senator McCallum felt the bill should be amended to clarify the difference between the four year term and an anniversary date.

Senator Eck asked Mr. Deschamps if he would prefer having the bill funded in this manner or out of the general fund. Mr. Deschamps stated he would prefer this method because there would likely be no general fund money to fund the bill.

Senator McCallum asked Mr. Deschamps what would happen if they were unable to collect money from someone. Mr. Deschamps stated that their fiscal analyst had estimated they would be able to collect somewhere in the neighborhood of two and one-half million dollars even realizing that there would be some fees they would have to let go uncollected.

Senator Aklestad closed by stating he would not be carrying the bill if it did not include some sort of funding mechanism. He stated this bill would not raise taxes or use money from the general fund. He feels we need to get salaries up to keep good people in the offices.

The hearing was closed on SB 116.

CONSIDERATION OF HOUSE BILL 76: Representative Mel Williams, District #85, is the sponsor of this bill. It was introduced to increase the fees charged by the clerk and recorder for filing notarial commissions and issuing certificates of official character to conform with the fee charged by the Secretary of State.

LOCAL GOVERNMENT COMMITTEE
JANUARY 24, 1985
EXHIBIT A

COUNTY OF GLACIER
OFFICE OF
COUNTY ATTORNEY

14 EAST MAIN STREET
P.O. BOX 438
CUT BANK, MONTANA 59427

JAMES C. NELSON
COUNTY ATTORNEY

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

PHONE 873-2278
(AREA CODE 406)

January 21, 1985

Senator Dave Fuller
Chairman
Senate Local Government Committee
State Capitol Bldg
Helena, MT 59620

In Re: Senate Bill 116 (An Act Revising the Pay Structure for Prosecuting Attorneys, etc.)

Dear Mr. Fuller:

I have been advised that the hearing on the above referenced Bill will be on January 24th, 1985, at 1:00 o'clock A.M. While I had planned to attend and testify at the hearing, nevertheless, the hearing date conflicts with the Board of Oil & Gas Conservation meeting in Billings, and as a member of that Board I will have to attend its meeting.

Nevertheless, as the two-term, part time County Attorney for Glacier County, Montana, I would like to express my complete support for the proposed Bill. The County Attorneys Association is concerned because of the large turnover rate among county attorneys and the fact that the work load of the office of the county attorney, especially in the part time offices, throughout the State is increasing tremendously each year. In addition to an increasing number of criminal cases, county attorneys are now required to prosecute and defend an ever rising number of civil cases on behalf of the county and its employees.

Notwithstanding the increase in our work load, our salaries have remained essentially the same, while other salaries within the judicial system have increased. Unless we are able to add to the salaries of the part time county attorneys and to provide longevity for prosecutors and their deputies, we are going to continue to lose prosecutors, with the result that the counties and the State of Montana and the public at large will suffer the consequences.

We believe that Senate Bill 116 is an innovative piece of legislation designed to increase salaries of prosecutors and increase our professionalism without any tax increase. The effect of the enclosed Bill will be to charge the costs of the increase in the county attorneys salaries against those persons involved in the criminal justice system who cause the prosecution work load.

In addition, the legislation would provide counties with tax relief inasmuch as counties now pay for the entire expense with respect to the deputy county attorneys salary.

In closing I heartily endorsed Senate Bill 116 and would respectfully urge the consideration of same by your committee. Will you please include this letter in the official committee hearing proceedings.

Sincerely,

JAMES C. NELSON

JCN:mjp

LOCAL GOV'T COMMITTEE
1/24/85
EXHIBIT B

DRAFT COPY
SUBJECT TO REVISIONS

Prosecution Services in Montana

A Report to the Subcommittee
on Judiciary

Prepared by:

Lois Menzies, Researcher
Montana Legislative Counc
Helena, Montana

July, 1982

Senate Joint Resolution 2, adopted by the 1981 Legislature, requests a study on establishing a statewide district attorney system in addition to an examination of the state's judicial districts and the delivery of indigent defense services. Before considering any district attorney proposals, it is necessary to investigate the Montana county attorney system, the current method used to provide prosecutorial services in the state. The following report reviews the constitutional and statutory provisions concerning county attorneys, provides a profile of the county attorney system, discusses suggestions for improving the current system, and examines the benefits and disadvantages of creating a statewide district attorney system in Montana.

Constitutional and Statutory Provisions

Unlike the 1889 Montana Constitution that defined the qualifications and term of office for the county attorney, the funding sources for his salary, and the procedure for filling vacancies,[1] the 1972 constitution makes one mention of the office of county attorney. Article XI, Sec. 3 of the new constitution provides that one optional form of county government includes the election of a county attorney. The qualifications, term, compensation, and duties of the county attorney are contained in Title 7, chapter 4, parts 22, 25, and 27 of the Montana Code Annotated.

Qualifications. Under Montana law, an individual must meet three qualifications to be eligible for the office of county attorney. He must be of voting age, a citizen of the state, and an elector of the county in which he is elected. A candidate for county attorney in a county with a population over 30,000 must meet two additional requirements: he must have lived in the state for two years immediately before taking office, and been admitted to practice law for at least five years before the date of election or appointment.

Term. The term of office for a county attorney is four years. Vacancies in office are filled by appointment of the county commissioners.

In each county with a population over 30,000, the county attorney must be a full-time official. He is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law. In any county with a population under 30,000, the county commissioners may, upon consent of the county attorney, make the office a full-time position.

Compensation. The county attorney's salary is payable monthly with one half from the county general fund and the other from the state treasury. According to §§7-4-2503 and 7-4-2504, MCA, the salary for a full-time county attorney, beginning July 1, 1981, shall be $36,500, or 7% more than his fiscal year 1981 salary, whichever is greater. Depending on the county's classification and population, a part-time county attorney receives the following salary:

(1) For first- through fifth-class counties, $14,000 plus $10 for each 100 persons or major fraction thereof included in the county's population; or

(2) For sixth- and seventh-class counties, $12,000 plus $20 for each 100 persons or major fraction.

In a county with a population under 30,000, a part-time county attorney receives an additional $12,000 per year. Both full-time and part-time attorneys receive annual salary increases based on 70% of the previous year's consumer price index.

Staff. In first- and second-class counties, the county attorney may appoint one chief deputy and one deputy. In all other counties, he needs the approval of the county commissioners to fill these positions. The county commissioners determine the salary of a deputy and assistant, which may not be more than 90% of the county attorney's salary. Any deputy county attorney in a county with a population over 30,000 who receives 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in profits of any private practice.

Except in first-class counties, the county commissioners may employ special counsel to assist

in the prosecution of a criminal case or to represent the county in a civil action. In addition, the commissioners may employ any other county attorney or member of his staff to provide criminal or civil legal services for the county. They may also hire a licensed attorney to perform any legal service in connection with the county's civil business.

Duties. Although the specific duties are found throughout the code, the general duties and responsibilities of the county attorney are described in §§7-4-2711 through 7-4-2717, MCA. The county attorney is the legal advisor of the board of county commissioners; he must defend all suits brought against his county. State law requires him to give written opinions to county, district, and township officers on matters relating to the duties of their offices and to act as counsel for conservation and fire districts in unincorporated territories, towns, or villages within his county.

Moreover, the county attorney is the public prosecutor who must institute proceedings for the arrest of persons charged with crimes and draw all indictments and informations. He must also represent and defend the state in all matters and proceedings within the county to which the state is a party or in which it may be beneficially interested.

Relationship With Attorney General. The state attorney general exercises supervisory powers over the county attorneys.[2] He may require county attorneys to submit periodic status reports on their official activities. At the attorney general's request, a county attorney must prosecute in the name of the state any criminal or civil action or special proceeding. In addition, the governor may require the attorney general to assist the county attorney in discharging his duties.[3]

Training Coordinator. Under the attorney general's supervision, within the Department of Justice, is the office of training coordinator for county attorneys. The office was originally funded through a Board of Crime Control grant; the state now funds the office through the general fund. The fiscal year 1982 budget for the coordinator's office was $107,000.[4]

The training coordinator is an attorney appointed by the attorney general from a list of three names proposed by the Montana County Attorney's Association. His duties include: providing local training in current aspects of criminal law for county attorneys and other law enforcement personnel; assisting in developing and disseminating standards, procedures, and policies to insure the consistent and uniform application of criminal laws throughout the state; consolidating present and past information on the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information; providing assistance with research, briefs, or other technical services requested by a county attorney or other law enforcement official; and applying for and disbursing federal funds available to aid the prosecutorial function.[5] Furthermore, a county may employ the prosecution coordinator or his staff to serve as special counsel in criminal cases at the rate of $25 an hour. This rate will increase to $35 in fiscal year 1983. County payments for special counsel are deposited in the state general fund.[6]

Profile of Montana County Attorney System

Because no comprehensive study containing statewide data on Montana's county attorney system has been published since 1972,[7] a questionnaire was sent to each county attorney in May, 1982, to collect current information. A copy of the questionnaire is contained in Appendix A. Forty-nine attorneys returned the questionnaire for a response rate of 87%.[8] The following is a summary and analysis of the survey responses. Additional information concerning salaries and criminal casefilings is also included.

County attorneys. Montana counties are served by 43 part-time and 13 full-time county attorneys. (See Appendix B). Except for Petroleum County, all of the county attorneys are residents of the county in which they serve; the county attorney of Petroleum County is a Fergus County resident. Among the 13 counties with full-time officials, 7 have populations over 30,000 and are mandated by law to employ full-time county attorneys; the remaining 6 (Jefferson, Lake, Park, Ravalli, Sanders, and Valley) with populations under 30,000 have opted to hire full-time county attorneys.

Jefferson County, population 7,029, is the least populated county employing a full-time county attorney.

Among the 49 county attorneys responding to the questionnaire, the county attorney in Valley County has served the longest (29.5 years). County attorneys in 6 other counties have served 20 or more years: Daniels, Fallon, Phillips, Powder River, Richland, and Treasure. In 9 counties, the county attorney has served 10 or more years. Most of the county attorneys (33, or 67%) have been in office less than 10 years, including 22 who have served one term (4 years) or less. One respondent has served as county attorney in two counties; 9 years in Granite County and 5 years in Glacier. The average number of years as county attorney is 8.7; this is 1.7 years longer than average term of service in 1972.[9] On the average, part-time county attorneys have more years in office than full-time ones: 8.9 years compared to 7.9.

The total expenditure for county attorneys' salaries for fiscal year 1982 was $1,136,373. The state funded one-half this amount ($568,186), while the counties financed the remainder. The fiscal year 1982 salary for each full-time county attorney was $36,751. The salaries for the part-time county attorneys ranged from $19,760 (Rosebud County) to $5,400 (Petroleum County) with an average salary of $15,316.

Staff: Appendix C provides data on staff positions within the offices of county attorney. Generally, staffs are small. Twenty county attorneys (41%) have no deputies. Among those counties with deputy county attorneys, 20 employ only one part-time attorney while nine counties employ one or more full-time deputies. Missoula County has the greatest number of deputy attorneys (10 full-time), followed by Yellowstone (8 full-time) and Cascade (5 full-time) counties.

Salaries for part-time deputies fluctuate from $500 in Chouteau County to $21,293 in Flathead County. Full-time salaries range from $14,991 in Richland County to $33,077 in Missoula County.

With the exception of Liberty County, each county attorney's office is staffed with a secretary. In Liberty County, secretaries employed by the county

attorney for his private practice also handle the county-related work. A majority of the counties (65%) employ one or more full-time secretaries.

In addition to legal and secretarial staff, some county attorneys are assisted by other employees. The county attorney in Flathead County, for example, employs a paralegal. Eight part-time legal interns work with the county attorney in Missoula County. Big Horn and Gallatin Counties each employ one full-time investigator. Stillwater County occasionally hires an undercover investigator to conduct drug investigations. In Yellowstone County, an office manager is also director of the deferred prosecution and victim/witness programs.

Workload. The county attorneys were asked to estimate the percentage of their work and their staff's work concerned with criminal, civil, and administrative matters. (See Appendix D.) Although county attorneys and their staff spend as little at 10% (Carter, Deer Lodge, and Treasure Counties), and as much as 80% (Cascade, Glacier, Teton, and Yellowstone Counties) of their time handling criminal matters for the State of Montana, a majority (32, or 63%) said that 50% or more of their work concerns criminal matters. On an average, criminal work occupies about 54% of a county attorney's and his staff's time.

Criminal casefiling statistics for 1981 are contained in Appendix E. During this year, 3,238 criminal cases were filed in Montana. The number of casefilings varied substantially across counties. Four counties (Yellowstone, Missoula, Lewis and Clark, and Cascade) had over 200 criminal cases while 26 counties had 20 or less casefilings. Two counties, Meagher and Petroleum, reported no criminal cases.

In addition to prosecuting criminal matters for the state, county attorneys also handle some state civil matters, including child support cases, wage collection, and insanity commitments. The county attorneys indicated that between 2% and 30% of their work and their staff's work is concerned with state civil matters. On an average, a county attorney and his staff devote about 10% of their time to state civil matters.

Among the questionnaire respondents, 92% (45) spent less than half their time on local civil work, such as defending suits brought against the county or advising the county commission, school districts, or other service districts. In only 4 counties (Deer Lodge, Madison, McCone, and Wheatland) did local civil work occupy 50% or more of the county attorney's and his staff's time. The average percentage of work concerning local matters was 27%.

Office administrative matters consumed little of the county attorneys' and their staffs' time. No office spent more than 10% of its time on administrative tasks. The average percentage of work concerned with office administration was about 4%.

One county attorney noted that, in addition to his criminal, civil, and administrative duties, 5% of his work was concerned with other matters, such as dealing with the public seeking free legal advice on a variety of subjects.

Budgets. For fiscal year 1982, $4,088,275 was budgeted for the 49 county attorney offices responding to the questionnaire. (See Appendix F.) Of this amount, the counties paid $3,520,089, or 86%. The state financed the remaining $568,186 (14%) in payment of one-half of each county attorney's salary. In addition, some counties received reimbursement from the Department of Revenue for collection of child support payments. One county attorney also listed fees and chargebacks to special districts as a source of revenue.

The county attorney budgets ranged from $21,185 in Wheatland County to $462,630 in Missoula County. The majority of counties (28, or 57%) had budgets under $50,000. Twelve counties (25%) had budgets ranging from $50,000 to $100,000. The budgets in 9 counties (Big Horn, Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Ravalli, Silver Bow, and Yellowstone) exceeded $100,000.

The state's contribution to the county attorney's salary has a varying impact on the budget for the county attorney's office. Counties with smaller offices receive a greater state subsidy than those with larger offices. For example, the state contribution amounts to only 4% of the total

county attorney budget in Missoula County, 5% of the budget in Yellowstone County, and 6% in Cascade and Flathead Counties. In contrast, Valley County receives 47% of its funding for the county attorney office from the state, Sanders County receives 35%, and Wheatland County receives 32%. The average percentage of state funding for the office of county attorney is 19%. It is interesting to note that the county attorneys estimated that they devote an average of 64% of their time to state criminal and civil matters but receive only 19% of their funding from the state.

Suggestions for Improvement

County attorneys were asked for suggestions for improving the delivery of prosecutorial services in Montana. Eight officials responded that the current county attorney system does not need "fixing" and that it works well as now constituted. One of these attorneys wrote that the present system is "quite adequate and sufficient for the effective prosecution of both criminal actions and the advising of the various boards."

Most county attorneys, however, did not share the view that nothing needs to be done to improve the delivery of prosecutorial services in Montana. The following summaries contain the county attorneys' recommendations for improvement.

Salaries. The most frequent suggestion for improving prosecution services was to increase the salaries of county prosecutors. Fourteen county attorneys mentioned the need for better salaries to recruit high quality individuals and to retain them in office. Many felt that the inadequte salaries for part-time county attorneys were a major cause for the high turnover in office. Oftentimes, young attorneys serve in office to gain experience and exposure before entering more lucrative private practices. Taxpayers' money used to train these individuals is lost when they leave office after a term or two. The high turnover rate also means that criminal prosecutions are being handled by attorneys without much experience. One respondent noted that this is his last term in office because he can no longer afford to be county attorney. Another county attorney felt that the salary of a part-time county attorney must be at least 50% of

a full-time county attorney's salary, while another recommended that part-timers earn at least as much as sheriffs. It was also suggested that a uniform and reasonable salary structure be created for deputy prosecutors and that the deputies be placed under a state classification plan.

State funding. Another popular suggestion shared by 11 county attorneys was to increase state funding for the office of county attorney. One attorney stated that "the legislature has repeatedly refused to adequately fund the function of the county attorney's office despite the fact that in almost all offices, way more than one-half of the work is done for the benefit and at the request of the state." Another felt that state funding for the county attorney offices must be restructured to restore equitable funding among counties. He noted that "in large counties, one-half of the elected official's salary is only a miniscule portion of the office costs, while in small offices, this state participation may contribute one-fourth to one-third or even more of the overall office cost." One county attorney recommended that the state assist with the costs of criminal law books and psychiatric evaluations. One attorney suggested that the state finance a portion of the salaries of deputy county attorneys. More specifically, one official recommended that the state pay one-half of the deputy county attorney's salary while another thought that full salary should be funded by the state. Two county attorneys felt that all costs associated with criminal prosecution, including indigent defense, must be assumed by the state.

Training coordinator. Seven county attorneys recommended that the office of training coordinator be expanded or better funded. "If the quality of prosecution services is to be improved statewide, it is necessary to adequately fund the attorney general's county prosecutors assistance office to provide training for new attorneys and to enable the state office to come in and assist on capital crimes and major and unusual felonies."

Investigative services. Seven county attorneys mentioned the need for more professional, thorough, investigative services. Among the comments on this topic, 3 officials suggested that state investigative services be available to the counties to provide technical assistance with

serious crimes, such as narcotics cases. Two attorneys also recognized the need for more training for law enforcement personnel (police, sheriffs, fish and game officials, and highway patrol officers) in criminal investigations.

Full-time prosecutors. Three county attorneys felt that all county attorneys must be full-time officials. One of these attorneys said that part-time prosecutors cannot "reasonably stay abreast of the niceties of criminal law" on a part-time basis. He also stated that part-time salaries force county attorneys to be "involved deeply with civil practice", which may lead to conflicts of interest. Another attorney suggested that "prosecutorial workloads should be equalized to the extent that prosecutors have large enough jurisdictions to justify full-time prosecutors and support staff."

District courts. Three county attorneys said that better access to the courts in the prosecution of criminal matters is needed. One attorney thought that it would be useful to have a district judge living in the county. Another wanted the district judge to visit his county more often.

Prosecutorial training. One attorney felt that in-state trial practice for county attorneys is needed. Another suggested that the state pay for prosecutorial training similar to the training available at the judges' colleges.

Statutory revision. One county attorney recommended that state laws be revised to:

1. Require the defense to list the witnesses that it will call on a case;

2. Abolish the exclusionary rule;

3. Increase the number of judges; and

4. Repeal the provision that a defendant released from prison on parole can continue to earn good time.

Miscellaneous suggestions. Additional suggestions for improving the delivery of prosecutorial services included:

1. Creating minimum qualifications for

part-time county attorneys;

2. Providing a retirement plan for county attorneys comparable to those now available to other justice system professionals;

3. Making the office of county attorney a nonpartisan office;

4. Extending the county attorney's term of office to six years;

5. Evaluating the supervisory powers of the attorney general over the county attorney; and

6. Providing rural prosecutors with adequate space and equipment.

Advantages/Disadvantages of a District Attorney System

Among the questionnaire responses were numerous comments on the need for a statewide district attorney system in Montana. Six county attorneys favored the creation of a district attorney system; 13 opposed it. Below is a discussion of the pros and cons of establishing a district attorney system, including comments from Montana county attorneys on this subject.

Advantages. Many proponents of a district attorney system believe that a county unit is often too small to provide adequate prosecutorial services.[10] They argue that crime is no longer a purely local concern. Criminal activity is becoming more sophisticated, and transcends county lines. Under a county attorney system, inconsistencies in criminal prosecution may develop and "the failure to prosecute in one county may loose a criminal to impose menacing acts in another county."[11] Inequities in funding among counties may also contribute to uneven prosecution. Moreover, part-time prosecutors who have civil duties may have no opportunity to develop expertise in criminal matters. Also, a part-time county attorney may experience conflicts between his public service and private practice. "Since his salary is a fixed amount and his total earnings depend on what he can derive from his

private practice, there is a continuing temptation to give priority to private clients."[12]

District attorney advocates recommend that the county unit be replaced by districts that are large enough to employ full-time prosecutors and support staff. Those Montana county attorneys supporting a district attorney system cite the need for full-time, career-oriented professionals to prosecute misdemeanors and felonies; county attorneys or civil attorneys should be hired to handle civil matters. Proponents also suggest that a district attorney system be funded by the state to reduce inequities among counties. In addition, statewide guidelines should be adopted to insure consistent prosecution and the exchange of information throughout the state.

Disadvantages. Opponents of a statewide district attorney system claim that a district prosecutor will be less responsive and sensitive to local law enforcement needs than a resident county attorney who can adjust prosecutorial policy to meet local conditions. In the words of one county attorney: "These persons may be better technical prosecutors, but they are not familiar with local problem patterns and may eliminate local support." Another county attorney said that a district attorney system would be "a step backwards in responsive government." Still another felt it would lead to a loss of local control and authority.

Some critics believe that a district attorney serving a multi-county district will be unable to provide advice, direct investigations, and assist local law enforcement officers on short notice and at various odd hours. According to one county attorney, "If a district prosecutor had to cover as much area and were in these small counties no more frequently than a district judge, prosecution services in small counties would suffer greatly."

Others oppose the establishment of a statewide district attorney system because they feel that it will be more costly than a county attorney system. One county attorney estimates that criminal justice in Montana will cost the state at least 400% more under a district attorney system. A district attorney would incur considerable travel expense. Furthermore, each county would be required to maintain an office for the district

attorney and another office for the attorney handling civil matters. One county attorney felt that a district attorney system would "merely foist another level of bureaucracy into an already complex criminal justice system."

Notes

[1]Article VIII, section 19, and Article VIII, section 34, 1889 Montana Constitution.

[2]Section 2-15-501, MCA.

[3]Section 2-15-201, MCA.

[4]Interview with Marc Racicot, Prosecution Coordinator, March 18, 1982, Helena, Montana.

[5]Section 44-4-103, MCA.

[6]Interview with Marc Racicot, March 18, 1982.

[7]Diana S. Dowling, Study of the Montana County Attorneys, (Helena, Montana: Montana County Attorneys' Association, 1972.)

[8]The following counties did not respond: Golden Valley, Jefferson, Lake, Lincoln, Petroleum, Powell, and Prairie.

[9]Dowling, Study of the Montana County Attorneys, p. 5.

[10]National Association of Attorneys General, Report on the Office of Attorney General (The Association: Washington, D.C., 1971), p. 108.

[11]Committee on Judiciary, The Methods of Funding of the Office of District Attorney, Interim Report, Vol. I, Texas House of Representatives, Sixty-Fifth Legislative Session, 1976.

[12]Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System (U.S. Government Printing Office: Washington, D.C., 1971), p. 220.

APPENDIX A

MONTANA COUNTY ATTORNEY QUESTIONNAIRE

Please return by June 1, 1982

County _____

1. Including the state's contribution for your salary, what is your office's total budget for FY 1982? $_____

2. Including the state's contribution for your salary, about what percentage of your office's budget comes from:

   The state _____% Specify source_____

   The county_____% Other_____% Specify source_____

   _____

3. How many years have you served as county attorney?_____

4. Is your position as county attorney full-time or part-time?

   Full-time_____ Part-time_____

5. How many persons does your office employ (not including yourself)?

   Attorneys: Full-time_____ Part-time_____

   Clerical and secretarial staff: Full-time_____Part-time_____

   Investigators: Full-time _____ Part-time_____

   Others (specify):_____

   _____

6. What is the current annual salary for each attorney on your staff (not including yourself)?

   $_____ $_____

   $_____ $_____

   $_____ $_____

7. About what percentage of your work and your staff's work is concerned with:

   Criminal matters:_____%

   Local civil matters (i.e., county, school district, or service district matters :_____%

   State civil matters (i.e., child support, insanity commitments, wage collection): _____%

   Office administrative matters:_____%

   Other (specify)_____

   _____

8. In your opinion, what can be done to improve the delivery of prosecution services in Montana?_____

   _____

   _____

   _____

   _____

APPENDIX B

COUNTY ATTORNEYS

County	Full-Time (F) Part-Time (P)	Years of Service	Salary (FY '82) [1]
Beaverhead	P	11.5	16,020
Big Horn	P	~~8~~ .25	17,855
Blaine	P	4	15,900
Broadwater	P	4	13,871
Carbon	P	1	16,010
Carter	P	5	13,697
Cascade	F	12	36,751
Chouteau	P	3.5	15,810
Custer	P	7.5	16,510
Daniels	P	~~26~~ 2	13,985
Dawson	P	7.5	16,380
Deer Lodge	P	4	16,450
Fallon	P	24	15,983
Fergus	P	~~13~~ 2	16,510
Flathead	F	3.5	36,751
Gallatin	F	~~6~~ 2	36,751
Garfield	P	4	13,583
Glacier	P	---* 2	13,400
Golden Valley	P	9	13,740
Granite	P	10	17,184
Hill	P	--- 2	36,751
Jefferson	F	~~4~~ 1	15,460
Judith Basin	P	--- 2	36,751
Lake	F	~~5~~ 2	36,751
Lewis and Clark	F	~~4~~ 2	15,430
Liberty	P	---	16,980
Lincoln	F	1.5	15,740
Madison	P	1	15,740
McCone	P	19	13,640
Meagher	P	3	13,940
Mineral	P	12	36,751
Missoula	F	8	15,640
Musselshell	P	~~3.5~~ 2	36,751
Park	F	---	5,400
Petroleum	P	25	15,740
Phillips	P	8	15,870
Pondera	P	~~20~~ .5	17,809
Powder River	P	---	15,890
Powell	P	--- 2	13,560
Prairie	P	1	36,751
Ravalli	F	28	16,656
Richland	P	14	16,287
Roosevelt	P	7.5	19,760
Rosebud	P	1	36,751
Sanders	F	2	15,740
Sheridan	P	2.5	36,751
Silver Bow	F		

APPENDIX C

STAFF

(F = Full-time; P = Part-time)

County	No. of Attys. (excluding Co. Atty.)	Salaries of Attys. (excluding Co. Atty.)	No. of Secretaries
Beaverhead	1(P)	$ 14,420	1(F)
Big Horn	1(P)	8,900	1(F);1(P)
Blaine	1(P)	11,925	1(F);1(P)
Broadwater	0	NA	1(P)
Carbon	0	NA	1(F)
Carter	0	NA	1(F)
Cascade	5(F)	18,000 - 30,200	4(F)
Chouteau	1(P)	500	1(F)
Custer	1(P)	14,859	2(F)
Daniels	0	NA	1(F)
Dawson	4(P)	14,742	2(P)
Deer Lodge	1(P)	12,000	1(P)
Fallon	0	NA	1(F)
Fergus	2(P)	13,200 - 14,859	2(F)
Flathead	4(F);1(P)	19,644 - 29,004(F); 21,293(P)	5(F)
Gallatin	4(F)	17,000 - 29,000	2(F)
Garfield	0	NA	1(F)
Glacier	1(P)	13,949	1(F)
Golden Valley	---*	---	---
Granite	0	NA	1(F)
Hill	3(P)	14,082 - 15,464	2(P)
Jefferson	---	---	---
Judith Basin	0	NA	1(F)
Lake	---	---	---
Lewis & Clark	3(F);1(P)	17,500 - 24,450(F); 16,000(P)	2(F)
Liberty	1(P)	3,600	0
Lincoln	---	---	---
Madison	0	NA	1(P)
McCone	0	NA	1(P)
Meagher	0	NA	1(P)
Mineral	0	NA	1(F)
Missoula	10(F)	19,000 - 33,077	5(F);2(P)
Musselshell	1(P)	10,800	1(F)
Park	1(P)	18,000	1(F)
Petroleum	---	---	---
Phillips	1(P)	12,000	1(F)
Pondera	0	NA	1(P)
Powder River	0	NA	1(F)
Powell	---	---	---
Prairie	---	---	---
Ravalli	1(F)	33,076	2(F)
Richland	2(F)	14,991	1(F);1(P)
Roosevelt	1(P)	14,658	1(F)
Rosebud	2(P)	17,000	4(P)
Sanders	0	NA	1(F)

Sheridan	0	NA	1(F)
Silver Bow	3(F)	19,000 - 25,000	2(F)
Stillwater	1(P)	7,880	1(P)
Sweet Grass	1(P)	5,136	1(P)
Teton	0	NA	1(P)
Toole	1(P)	9,600	2(P)
Treasure	0	NA	1(P)
Valley	1(P)	14,603	1(F)
Wheatland	0	NA	1(P)
Wibaux	0	NA	1(P)
Yellowstone	8(F)	17,500 - 31,000	6(F);2(P)

[1]Two part-time attorneys are paid; the other two serve without pay.

[2]Clerical work performed by secretaries working in county attorney's private law office.

[3]Secretary is also a paralegal assistant.

*Blank spaces indicate no response.

APPENDIX D

WORKLOAD

County	% Criminal Matters	% State Civil Matters	% Local Civil Matters	% Office Administrative Matters
Beaverhead	60	10	30	0
Big Horn	75	5	20	0
Blaine	45	10	45	**
Broadwater	70	9	20	1
Carbon	65	5	20	10
Carter	10	2	20	2
Cascade	80	5	10	5
Chouteau	60	10	30	0
Custer	75	13	10	2
Daniels	50	6	40	4
Dawson	60	12	25	3
Deer Lodge	10	5	80	5
Fallon	75	10	15	0
Fergus	60	15	20	5
Flathead	47	23	25	5
Gallatin	50	20	20	10
Garfield	45	10	45	0
Glacier	80	10	5	5
Golden Valley	---*	---	---	---
Granite	70	5	25	0
Hill	75	10	10	5
Jefferson	---	---	---	---
Judith Basin	30	30	30	10
Lake	---	---	---	---
Lewis and Clark	60	7	25	8
Liberty	60	5	35	0
Lincoln	---	---	---	---
Madison	40	10	50	0
McCone	35	5	55	5
Meagher	60	5	35	0
Mineral	50	10	35	5
Missoula[1]	45	15	25	10
Musselshell	75	5	15	5
Park	75	10	10	5
Petroleum	---	---	---	---
Phillips	50	15	30	5
Pondera	75	5	15	5
Powder River	30 - 40	5	20	5
Powell	---	---	---	---
Prairie	---	---	---	---
Ravalli	42.5	17.5	40	0
Richland	55	---	44	1
Roosevelt	25	10	15	---
Rosebud	50	10	10	10
Sanders	45	10	35	10
Sheridan	40	15	40	5
Silver Bow	50	5	35	10

Stillwater	70	10	20	**
Sweet Grass	35	5	15	5
Teton	80	3	10	2
Toole	60	10	30	0
Treasure	10	10	30	0
Valley	60	20	15	5
Wheatland	30	10	50	10
Wibaux	50	10	40	0
Yellowstone	80	10	10	0

*Blank spaces indicate no response.

**Included in criminal and civil percentages.

[1]5% spent on other matters.

APPENDIX E

1981 CRIMINAL CASEFILINGS

County	Number of Casefilings	1983
Beaverhead	54	40
Big Horn	64	64
Blaine	17	24
Broadwater	9	8
Carbon	25	15
Carter	3	2
Cascade	202	210
Chouteau	23	10
Custer	100	67
Daniels	6	0
Dawson	90	74
Deer Lodge	21	27
Fallon	10	5
Fergus	45	28
Flathead	147	176
Gallatin	107	85
Garfield	2	4
Glacier	35	37
Golden Valley	1	0
Granite	14	10
Hill	66	56
Jefferson	40	37
Judith Basin	4	1
Lake	110	137
Lewis and Clark	255	184
Liberty	4	4
Lincoln	137	126
Madison	34	13
McCone	18	14
Meagher	0	0
Mineral	8	7
Missoula	351	366
Musselshell	32	17
Park	88	81
Petroleum	0	0
Phillips	14	7
Pondera	12	1
Powder River	11	11
Powell	57	25
Prairie	3	3
Ravalli	86	104
Richland	120	188
Roosevelt	42	28
Rosebud	81	54
Sanders	51	31
Sheridan	25	16
Silver Bow	86	91

Stillwater	15	19
Sweet Grass	20	10
Teton	11	14
Toole	13	17
Treasure	3	1
Valley	20	18
Wheatland	2	8
Wibaux	7	3
Yellowstone	437	355

Source: Judicial Management Information System, Office of Supreme Court Administrator.

APPENDIX F

FISCAL YEAR 1982 BUDGETS

County	FY '82 Budget	% Funded By State	% Funded By County
Beaverhead	67,000	12%	88%
Big Horn[1]	111,470	8%	90%
Blaine	69,000	12%	88%
Broadwater	33,000	21%	79%
Carbon	44,205	18%	82%
Carter	26,500	26%	74%
Cascade	289,547	6%	94%
Chouteau	34,900	23%	77%
Custer	63,781	13%	87%
Daniels	25,279	27%	73%
Dawson	63,090	13%	87%
Deer Lodge	43,469	19%	81%
Fallon	43,221	18%	82%
Fergus	74,180	11%	89%
Flathead	310,000	6%	94%
Gallatin	203,000	9%	91%
Garfield	23,731	28%	72%
Glacier	68,129	12%	88%
Golden Valley	---*	---	---
Granite	36,000	19%	81%
Hill	80,794	10%	90%
Jefferson	---	---	---
Judith Basin	27,235	28%	72%
Lake	---	---	---
Lewis and Clark	202,510	10%	90%
Liberty	29,944	26%	74%
Lincoln	---	---	---
Madison	40,979	20%	80%
McCone	26,000	30%	70%
Meagher	30,559	23%	77%
Mineral	31,782	22%	78%
Missoula[2]	462,630	4%	95%
Musselshell	37,000	21%	79%
Park	71,226	26%	74%
Petroleum	---	---	---
Phillips	49,620[3]	16%	84%
Pondera	56,038	14%	86%
Powder River	28,400	31%	69%
Powell	---	---	---
Prairie	---	---	---
Ravalli	124,118	15%	85%
Richland	63,966	13%	87%
Roosevelt	48,055	17%	83%
Rosebud	85,000	12%	88%
Sanders	52,163	35%	65%
Sheridan	48,000	16%	84%
Silver Bow	204,118	9%	91%

Stillwater	36,626	22%	78%
Sweet Grass	40,440	17%	83%
Teton	38,965	20%	80%
Toole	46,809	17%	83%
Treasure	25,700	26%	74%
Valley	39,427	47%	53%
Wheatland	21,185	32%	68%
Wibaux	27,152	28%	72%
Yellowstone	382,332	5%	95%

*Blank spaces indicate no response.

[1]2% of funding comes from federal/state child support unit.

[2]1% of funding from fees and charge backs to special districts.

[3]Fiscal year 1983 budget.

SB 116

MISSOULA COUNTY
DEPARTMENT OF PERSONNEL AND LABOR RELATIONS
MISSOULA COUNTY COURTHOUSE, ROOM 160
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

Revised results of Deputy County Attorney Survey (January 1985):

	SURVEY
CHIEF	31,012 - 40,428
SENIOR	28,985 - 35,951
II	24,212 - 28,922
I	20,950 - 24,493

The above results include State of Montana salaries, and other Montana counties have been verified and any minor changes included.

LOCAL GOVERNMENT COMMITTEE
JANUARY 24, 1985
EXHIBIT C

NAME Robert M. McCarthy BILL NO. SB 116

ADDRESS Butte-Silver Bow Courthouse, Butte, 59701 DATE 1/24/85

WHOM DO YOU REPRESENT Butte-Silver Bow County Attorney

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am particularly in support of the state's funding of one-half the salary of a chief deputy county attorney and one-half the salary of one deputy county attorney.

The increased state-mandated case load, and particularly the increased felony criminal case filings in recent years call for increased state funding of the offices of the various county attorneys. Particularly by the state-funding method.

In our county the number of criminal filings is at an all time high, in spite of less of population, and more particularly more than 100 criminal cases have been filed in each of the last 3 years. 1982 - 181 cases
1983 - 103 cases
1984 - 110 cases

Load to Aug 23

SB 116

LOCAL GOVERNMENT COMMITTEE
JANUARY 24, 1985
EXHIBIT D

S. B. 116 (COUNTY ATTORNEY SALARY BILL)

SENATE LOCAL GOVERNMENT COMMITTEE HEARING 1/24/85

Testimony of John V. Potter, Jr., Meagher County Attorney

I have been the elected County Attorney for Meagher County 20 years out of the past 26 (resigned mid-term about 16 years ago, was nominated by write-in 6 years later, which I accepted, and have been elected County Attorney since).

The salary at $15,219.51 for fiscal year 1984 is among the four lowest of County Attorneys in the State of Montana. As a "part time" County Attorney, I am permitted a private practice, but in recent years the designation "part time" is somewhat of a misnomer.

Over the past years I have on two occasions associated with a young beginning attorney with the idea that my associate (who received no pay from the state or county as a deputy) could take care of the majority of the County Attorney work and assist in my private practice. In reality, on both occasions, this associate could, and to a large extent did, spend nearly full time on County Attorney work; in addition, as the elected County Attorney I expended considerable time on trials, felony cases and more complicated civil matters.

A review of the index to the Montana Codes (over 7 pages) gives an indication of the number of duties imposed upon County Attorneys. It seems as if every piece of legislation affecting the regulation of a business or business practice from ambulance violations to veterinarians has appended a provision that violations shall be enforced and prosecuted by the County Attorney. The County Attorney is charged by law with providing legal advice to nearly all local public bodies from Airport Boards through Schools to Water Conservancy Districts.

A number of state agencies from the Department of Labor through the Welfare Department and Unemployment Commission seek assistance from the local County Attorneys in collections as well as prosecution of violations.

In the last month I have been called upon to prosecute a Welfare Fraud case (the file is an inch thick), to enforce Dam Safety violations in Meagher County, to collect from a number of "run-away pappies" under URESA, to advise on a school bond issue, to advise on $5 million industrial revenue bond issue, a claimed wrongful discharge of a county employee, etc., in addition to charging and prosecution of criminal offenses, both misdemeanor and felony.

I have a Sheriff, four deputies and a FW &P Game Warden working full time, it seems, to dig up cases for me to prosecute, in addition to a Highway Patrolman and Livestock Inspector who divide their attention among several counties.

In the past 12 months I prosecuted a Felony Assault charge by motor vehicle against a police officer, secured a misdeamnor conviction, but defense counsel was awarded in excess of $2,000 attorney's fees for the indigent defendant. During this time I also prosecuted a Securities Violation and Theft by Deception charge, secured a guilty plea, but again defense counsel was awarded in excess of $5,000 attorney's fees for the indigent defendant. In these two cases alone Meagher County expended more money for defense counsel than it contributed to my salary. I think it reasonable to conclude that in these two cases alone as County Attorney I expended as much time and rendered services no less valuable than those provided by defense counsel.

I cannot begin to explain the increased time required and the additional duties imposed upon a "part time" County Attorney over the past 26 years.

All I can say is that without a substantial increase in salary and benefits, I have no intention of running for County Attorney again, whether or not there is another attorney available in the community even willing to take the position.

Thank you for your time and consideration.

LOCAL GOVERNMENT COMMITTEE
JANUARY 24, 1985
EXHIBIT E

EFFECTIVE OCTOBER 1, 1983
REVISED JULY 26, 1984

F E E S

RECORDING - $2.50 per page plus 50¢ for each index entry in excess of the first entry:

Affidavits
Affidavits of Annual Labor on Mining Claims (the first claim is indexed as a part of the $2.50 per page fee; each additional claim costs 50¢ for indexing.)
Assignments
Bills of Sale
Certificates of Location for Mining Claims
Condominium Declarations, including:
- Architect's or Engineer's Statement
- Bylaws and Amendments
- Final Declaration
- Preliminary Declaration
- Floor Plans

Contracts for Deed
Court Decrees
Covenants, Declarations of
Deeds
Easements
Homestead, Declarations of
INH (Inheritance Tax Forms)
Judgments
Leases
Mortgages
Notices of Purchasers Interest
Notices of Trustee Sale with Affidavits
Powers of Attorney
Promissory Notes
Releases (satisfactions) of Mortgages, Assignments, Powers of Attorney
Rental Agreements
Trust Indentures
Water Users' Association Stock Subscription, Contract, Stock Certificate & Articles of Incorporation

OTHER RECORDING:

*Water Rights Transfer Certificates - $2.50 per page plus 50¢ for each index entry in excess of the first entry; a second check or money order payable to the County Clerk & Recorder is required for the additional State fee of $5.00.

INDEXING EXAMPLES:

Indexes are kept by surname, business name, and/or mining claim name. In a transaction involving two parties, each party is allowed one surname before there is an additional indexing fee.

EXAMPLES: John Doe to Jane Smith (No indexing fee)
John and Mary Doe to Jim and Jane Smith (No indexing fee)

Each additional surname is charged the 50¢ indexing fee.

EXAMPLES: John Doe and Mary Johnson to Jane Smith (extra 50¢)
John Doe and Mary Johnson to Jane Smith, dba Consulting Professionals (extra $1.00)

Senator McCallum stated that, if Senator Halligan's bill were adopted, the county commissioners would be able to budget as many mills as they want (up to the fifteen mill level) for parks.

The hearing was closed on SB 204.

FURTHER CONSIDERATION OF SENATE BILL 88: Karen Renne explained the amendments to SB 88 that would require the money contributed by the State, to be returned to the State and, the remainder to go to the subsequent pension fund. The proposed amendments are attached as Exhibit F to these minutes.

Senator Fuller and other senators asked that the bill be amended so that the money contributed by the city would go to the city general fund rather than to the subsequent pension fund.

ACTION TAKEN ON SENATE BILL 88: Senator Crippen moved the proposed amendments as corrected be adopted. The motion passed unanimously.

Senator McCallum suggested that a line be added to direct the State Auditor to find out exactly how much money was contributed by the State.

Senator Eck moved the new amendment as suggested by Senator McCallum be adopted. The motion passed unanimously.

Senator Eck moved the Committee recommend a DO PASS as amended on SB 88. The motion passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 130: Senator Fuller proposed an amendment to include sheriffs' standard notices in the bill. Karen Renne will prepare the proposed amendment.

Senator Regan moved the Committee adopt a proposed amendment to include an effective date of July 1, 1985, in the bill. The motion passed unanimously.

ACTION TAKEN ON SENATE BILL 127: Senator Regan moved the Committee recommend a DO PASS as amended on SB 127. The motion failed with Senators Mohar, Regan, Crippen, and Eck voting yes and Senators Pinsoneault, Story, McCallum, Hirsch, Fuller, and Harding voting no. The bill was therefore killed. Senator Story will carry the Adverse Committee Report.

FURTHER CONSIDERATION OF SENATE BILL 116: Senator Fuller suggested Karen Renne look into what other county salary bills there are and suggested looking into the possibility of doing one bill regarding base county salaries that would consolidate all of the other bills.

The meeting adjourned at 2:30 p.m.

Senator Dave Fuller, Chairman

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 22, 1985

The fifteenth meeting of the Local Government Committee was called to order at 2:30 p.m. on February 22, 1985 by Chairman Dave Fuller in Room 405 of the Capitol Building.

ROLL CALL: Senator Pinsoneault was excused to attend another committee meeting. All other members were present.

FURTHER CONSIDERATION OF SENATE BILL 325: Senator Regan brought up that some co-ops already have a 911 system, but they use the number 511. While it would be no problem for them to convert to 911, they do not want to charge their customers for the service they already provide free of charge. She would like to amend the bill to include this.

FURTHER CONSIDERATION OF SENATE BILL 116: Karen Renne explained the amendments which would totally remove longevity increases from the bill. Also, the State would pay half salary of no more than two deputy attorneys per county. The amendments will also reduce from sixty percent to fifty percent of county attorneys' salaries in determining the pay of part-time deputy attorneys. They would still receive an increase but not as much as in the original bill.

Senator Regan suggested getting a new fiscal note on the bill after the amendments are adopted to show the reduced figures when the bill is on the floor. Karen Renne said she would ask for a new fiscal note.

Senator Hirsch asked how much the increase would be. Karen Renne said it could be as much as five thousand dollars a year in smaller counties depending on both population and county class.

ACTION TAKEN ON SENATE BILL 116: Senator Eck moved all amendments be adopted except numbers eight and nine. The motion passed with Senators Story, Hirsch, and McCallum voting no.

Senator Eck moved the Committee recommend a DO PASS as amended on SB 116. The motion passed with Senator Mohar voting no.

ACTION TAKEN ON SENATE BILL 336: Senator Mohar moved the Committee recommend a DO NOT PASS on SB 336. The motion passed with Senator Fuller voting no. Senator Harding will carry the Adverse Committee Report.

STANDING COMMITTEE REPORT

FEBRUARY 22 1985

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE BILL No. 116

FIRST reading copy (WHITE color)

REVISING PAY STRUCTURE FOR PROSECUTING ATTORNEYS AND PROVIDING FUNDING

Respectfully report as follows: That SENATE BILL No. 116

be amended as follows:

1. Title, lines 4 and 5.
   Following: "ENTITLED: "AN ACT" on line 4
   Strike: remainder of line 4 through "ATTORNEYS;" in line 5

2. Title, line 7.
   Following: "SALARY OF"
   Insert: "NO MORE THAN TWO"

3. Title, lines 8 and 9.
   Following: "ATTORNEYS;" in line 9
   Strike: remainder of line 8 through "DEPUTIES;" in line 9

4. Title, line 11.
   Following: "7-4-2502"
   Strike: ","
   Insert: "AND"
   Following: "7-4-2503,"
   Strike: "AND 7-4-2505,"

5. Page 1, line 16.
   Following: "attorneys"
   Strike: ","
   Insert: "and"

6. Page 1, line 17.
   Following: "salary of"
   Strike: "the"
   Insert: "two"

XXXXXXXX

XXXXXXXXX

CONTINUED

Senator Dave Keller Chairman.

FEBRUARY 22 19 85

7. Page 1, lines 18 through 20.
Following: "7-4-2703" in line 18
Strike: remainder of line 18 through "deputies" in line 20

8. Page 3, line 17.
Following: "with"
Insert: "the salaries of the county attorney and no more than two deputies payable"

9. Page 3, lines 19 and 20.
Following: "auditor."
Strike: remainder of line 19 and line 20 in its entirety

10. Page 5, lines 21 through 25.
Following: "official" on line 21
Strike: remainder of line 21 through "class" in line 25

11. Page 6, line 19 through line 15, page 7.
Strike: subsection (d) in its entirety

12. Page 8, line 3 through line 1, page 9.
Strike: section 4 in its entirety
Renumber: subsequent sections

AND AS AMENDED

DO PASS

Senator Dave Fuller, Chairman

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 322	2/27/85	3/19/85 3/28/85	3/28/85					3/28/85	
SB 327	2/27/85	3/19/85	3/19/85				3/19/85		
SB 328	2/27/85	3/19/85 3/27/85	3/27/85						3/27/85
SB 331	2/27/85	3/19/85	3/19/85					3/19/85	
SB 332	2/27/85	3/21/85	3/21/85					3/21/85	
SB 257	2/27/85	3/15/85	3/15/85					3/15/85	
SB 267	2/27/85	3/15/85	3/15/85				3/15/85		
SB 268	2/27/85	3/20/85 3/26/85	3/26/85					3/26/85	
SB 290	2/27/85	3/15/85	3/15/85				3/15/85		
SB 292	2/27/85	3/15/85	3/15/85				3/15/85		
SB 294	2/27/85	3/21/85	3/21/85				3/21/85		
SB 352	2/27/85	3/21/85	3/21/85				3/21/85		
SB 406	2/27/85	3/22/85	3/22/85					3/22/85	
SB 116	3/7/85	3/25/85 3/27/85	3/30/85 (Tabled 3/27/85)		(Un-tabled 3/29/85)			3/30/85	
SB 375	3/7/85	3/20/85 3/27/85	3/27/85					3/27/85	
SB 376	3/7/85	3/20/85 3/27/85	(Tabled 3/27/85)						

commissioners said they would be willing to kick in that proportion of their dollars that they receive from the Board of Crime Control because they are the ones that are at risk. He feels that the Board of Crime Control is interested because if they don't use the funds by 1987, some of the dollars they are presently operating with aren't going to be available.

There being no further questions, the hearing was closed on HJR 44.

CONSIDERATION OF SENATE BILL NO. 116: Senator Gary Aklestad, Senate District #6, chief sponsor of SB 116, testified. This bill deals with part-time county attorneys. It is an act to adjust the salary of part-time county attorneys; requiring the State to pay one-half of the salary of no more than two authorized deputy county attorneys; and providing funding by imposing a charge on persons convicted of criminal offenses or who forfeit bond or bail. Senator Aklestad gave the highlights of the bill and explained some of the amendments that have been made and will be proposed to the bill. He referred the committee to page 6, lines 7-9 where the salaries are being increased for second and third class part-time county attorneys. At the time the amendment was made, Senator Aklestad understood that there were no first class counties that had part-time attorneys but since that time understands there are some. He suggested the committee insert "first" on page 6, line 7 following "THE". He said the amendment on lines 6-9 was placed in the bill on the Senate floor by him because it had been inadvertently left out in the Senate committee. He said that they had inadvertently taken out fourth, fifth, sixth, seventh class counties that were supposed to be getting 50% of full-time county attorney salaries, and they went back to the original salaries which they were receiving. He submitted an amendment that would place these people back in at 50% which the Senate Committee originally had. Senator Aklestad said that another sponsor of the bill was concerned with the words "base salary." He was concerned that the base salary may take them back to a figure of $36,000 when they are actually receiving more than that. Therefore, there may be a need to delete "base".

PROPONENTS:

Robert Deschamps, Missoula County Attorney, testified in support of the bill. He said there are other amendments to the bill he would like to see adopted. On page 1, lines 23 and 24 he asked that this deleted material be reinserted and further insert "part-time" following "~~for~~" and strike the words "~~their deputies~~" and reinsert "deputy county attorneys." On pag e 3, he suggested that the stricken material on lines 24, 25 and on line 1 of page 4 be left in. He asked that the stricken material on page 7, lines 1-22 be reinserted with the following changes in that stricken language: On line 2 following "~~each~~" insert "part-time"; on line 7, following "~~each~~"

insert "part-time"; on line 12 following "each" insert "part-time"; on line 15 following "a" insert "part-time". On page 8, he asked that the stricken material be returned and also the stricken material on page 9.

Mr. Deschamps said the reason why this bill was introduced was because an interim committee studied problems involving county attorneys and their deputies and their general funding powers. That interim committee prepared a report which was marked Exhibit A and attached hereto. The interim report revealed some serious problems with county attorney turnover, funding mechanisms and various other problems in the county attorney offices. A number of bills were drafted by the interim committee, however, none of them were introduced. During this session, the county attorneys took those bills that the interim committee had generated and put them together into this particular SB 116. Mr. Deschamps pointed out that county attorneys' offices have a tough time competing with other state agencies and they need some sort of incentive to continue in their jobs. He stressed that this bill does not pertain in any way to the full-time county attorneys such as himself.

Gordon Morris, executive director for the Montana Association of Counties, said that the association supports this bill. He said that this is one of the few bills this session that would have a positive impact on county budgets.

Ed McLean, chief of the Criminal Division in the Missoula County Attorney's Office, spoke on behalf of the deputy county attorneys of the state in support of this bill. He said that the universal feeling among senior deputies in the state is that the county attorneys' offices are nothing but training grounds for deputy county attorneys to become trial attorneys involved in civil litigation. He said it is their feeling that the people of the state of Montana deserve more, and in deserving more, they would ask that the committee support this bill inclusive with Mr. Deschamps' amendments.

John Pratt, County Attorney from Musselshell County and also president of the Montana County Attorney's Association, testified as a proponent. He feels that this bill takes care of a serious problem that is now present in the state, particularly in regard to part-time county attorneys. In the last eight years, they have had a turnover of 37 county attorneys out of 56, and 30 of those have been from the smaller counties. Not one of those turnovers is the result of an election. He feels this bill would alleviate many of the problems with keeping part-time county attorneys in that it would make salaries commensurate with the work. They feel that it is a bill that is paid for by the people who cause the problems -- people who commit the offenses. In closing, he said that we are at a point right now where there is a desparate need for experienced people in the county attorneys' offices.

Scott Graham, representing the Missoula Police Department, spoke in favor of the bill. He briefly told the committee how difficult it is to retain part-time county attorneys. He said that a lot of cases have been lost because of inexperienced deputy county attorneys.

Ray V. Kalbfleisch, Toole County Attorney, said that the county attorneys are promoting this bill as an incentive to retain excellent county attorneys. He feels this will also save the Montanans money. He said the economical advantages are clear. One is that there is sufficient monies available to pay the longevity portion for both the county's portion and the state's portion. Another consideration could be a reduction of the longevity payment if this committee or the House deems it necessary. He said that they have submitted an amendment pertaining to the longevity portion on behalf of the department and the county attorneys.

Ed Laws, county attorney for Stillwater County, spoke in favor of the bill. He said he would like the members of this committee to think about the fact that the longevity portion for part-time attorneys is a two-way street. He further feels that it is important to retain good, experienced part-time county attorneys.

Don Ranstrom, Blaine County Attorney and treasurer for the Montana County Attorneys' Association, said he wanted the committee to be sure to understand the fact that the surcharge that would be levied is over and above the other fine that would normally be levied, and it would be divided as it is under the current law between the city and the state for any offenses that are handled in the cities and towns. Presently under law, the county attorney assumes all of the cost to perform its duties for any felony offenses that are committed within the boundaries of a city or town. So, in effect, there is no loss to the cities and towns in terms of revenue. In fact, they are simply assisting us bookkeeping-wise in keeping the funding separate, but the surcharge is over and above the monies that they would still retain under the present fine system.

There were no further proponents.

OPPONENTS:

Bill Verwolf, speaking on behalf of the city of Helena, said they do not disagree with the basic concept of the bill. Their concerns have to do with the funding mechanism. To place these fines on the kinds of offenses that go through a municipal court, in most cases result in a fairly large percentage of increase in the dollar value of that crime. He said that they understand that it doesn't affect the amount of money they keep out of the fine process, but in some cases involving a minor misdemeanor

(such as a parking ticket) a $2.00 fine becomes a $12.00 parking ticket. We are asking that municipal courts be exempt from the operations of this bill and that the $10.00 additional fine be on those courts that the county prosecutor's office is involved with on a day-to-day basis.

Alec Hansen, representing the Montana League of Cities and Towns, spoke not so much in opposition to the bill, but in support of the amendments proposed by Mr. Verwolf. He said he is not sure what the financial ramifications are if municipal courts were exempted. But he thinks it is critically important that municipal courts are exempt because if they are not, this will just be another example of where city residents are contributing significantly to county programs. Another alternative would be that money collected in the municipal courts would be returned to the cities to fund city attorneys and city court costs. He feels that fairness dictates that the money collected in municipal court needs to be returned to the cities, or that the cities be exempted from the bill.

Jim Jensen, representing the Montana Magistrates' Association, said that they are not opposed to the idea of longevity and retention of the qualified prosecutors, but we are concerned and do oppose the new section 1 on page 2 of the bill -- the method of raising funds. There are three branches of government. We are talking about a surtax that will be collected and distributed by the courts. He feels the legislature needs to look very carefully at this provision and look at its own responsibility with levying taxes. With this bill, it will cost a lot of money for the justice of peace courts to handle just the bookkeeping involved. Mr. Jensen feels this is a bad precedent to set because he is not sure where it will end. It seems to him that a collection benefit of a strong, well-trained, well-paid prosecuting staff at the local level ought to be a shared responsibility by those people who are receiving the benefits. He feels that perhaps the judges are not going to assess the fines at a level as high as they might because of the way this particular legislation is written. The counties may receive a little less revenue than more when all is said and done.

There being no further opponents, Senator Aklestad closed. He again made the point that in order to retain good county attorneys their salaries will have to be increased.

The floor was opened to questions from the committee.

Rep. Gould asked Mr. McLean to comment on Mr. Verwolf's testimony pertaining to the $2.00 parking tickets costing $12.00 each. Mr. McLean said that it was an inaccurate statement. Parking tickets are not included under this. It starts with misdemeanors and goes to felonies. Rep. Addy asked Mr. Racicot from the Attorney General's Office, if he would object

non-severability clause being added to the bill. He is concerned that we have a funding mechanism at the beginning and an additional obligation at the end. If we lose the funding mechanism, I don't want to be stuck with the fiscal obligation.

Rep. Keyser asked what Mr. Deschamps thought of exempting municipalities from the bill. Mr. Deschamps said the problem is with the fiscal impact. If municipalities are exempt, he doesn't know what it will do to the revenue.

Rep. Brown wanted to know how Mr. Deschamps' amendments affect the fiscal note to this bill. Mr. Deschamps said that the cost will actually be reduced because the fiscal note was prepared with the idea that full-time county attorneys would be changed. Because the full-time is excluded, we will see a reduction in the fiscal impact. In response to another question, Mr. Deschamps said he has not seen the revised fiscal note of March 7th.

In response to a question, Mr. Racicot feels it is clear in this bill that a parking violation will not be affected by this legislation. However, Mr. Racicot can see where a parking ticket might apply if the person who receives the ticket refuses to pay the fee.

There being no further questions, the hearing was closed on SB 116.

CONSIDERATION OF SENATE BILL NO. 412: Senator Ed Smith, Senate District #10, chief sponsor of SB 412, testified. This is an act to require 30 days to be served under a sentence for committing certain criminal offenses amount to child abuse. He informed the committee that this legislation was brought about by the request of the Northeast Montana Child Sex Abuse Task Force. Some of the members of that Task Force would have liked to have testified on the bill but were unable to do so because of the long distance involved in coming from Plentywood. He told the committee how he got personally involved in this particular issue.

There were no proponents or opponents, and Senator Smith closed.

In response to a question asked by Rep. Miles, Senator Smith said that this legislation would force the judge to give the offender at least 30 days in jail. Rep. Miles asked if section 46-18-222 would apply to the mandatory 30 day sentence. It was the intention of the committee to clarify that this section does not apply to the first 30 days of such imprisonment.

There being no further questions, the hearing closed on SB 412.

ACTION ON SENATE BILL NO. 116: Rep. Addy moved that SB 116 BE CONCURRED IN. The motion was seconded by Rep. O'Hara. Rep. Brown made a substitute motion that SB 116 BE NOT CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Brown feels that this bill is a revenue measure and goes well beyond the scope of what is generally acceptable. Rep. Brown also questioned if the bill is, in fact, constitutional. Rep. Mercer said he really doesn't think that it is unconstitutional because, presently, the Court is allowed to charge criminals -- once they are convicted -- for their court-appointed attorney and other court costs incurred. With this bill, all they would be charged is a $10.00 fee if convicted on a misdemeanor charge.

Rep. Addy moved to add a non-severability clause to the bill. The motion was seconded by Rep. Brown. The question was called on the motion, and it carried unanimously. He further moved to amend page 2, line 10 following "imposed by " by striking "all courts of original jurisdiction" and inserting "district courts and justices' courts". The motion was seconded by Rep. Darko. Rep. Hannah said he feels this is a good amendment because the fiscal note will not be impacted at all according to the testimony given by Mr. Racicot. The question was called, and the motion carried unanimously.

Rep. Eudaily wondered with the above amendment whether or not they would really be eliminated out of the fiscal statement.

Brenda Desmond, staff attorney, raised the issue of an equal protection problem with the above amendment. Rep. Hannah asked if another problem will be presented as a result of dividing the court system up where fines will be imposed in some courts and not in others. Rep. Addy said that it will probably depend on the classes of the offense, too. He said he would want to look at the jurisdiction of the two courts to see whether it could be argued on a rationale basis for distinction. He feels that the revenue aspect would be one argument for a rationale basis. It would also depend on the types of offenses that would be treated in justice court vs. police court. So, his answer was a "maybe."

Rep. Kreuger said he thinks Brenda has raised a good point in terms of the equal protection problem this above amendment may present.

Without objection, the committee decided to postpone action on SB 116 until further amendment can be drafted and considered.

ACTION ON SENATE BILL NO. 321: Rep. Hammond moved that SB 321 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed. Rep. Mercer submitted a set of amendments

ment is already taking care of that.

In response to Rep. Rapp-Svrcek, Rep. Keyser said he happens to know that drug trafficking is on the increase. He encouraged Rep. Rapp-Svrcek to check the state records on drug trafficking.

Even though Rep. O'Hara is very much in favor of Rep. Keyser's reason to adopt the amendment, he doesn't feel that the bill should be cluttered with this language. The question was called on the motion to amend, and it failed on a voice vote.

Rep. Eudaily further moved to amend page 20, line 2 following "day" strike "or" and insert "of". The motion was seconded by Rep. Gould and carried unanimously.

Rep. Cobb moved to amend pages 9 and 10 by deleting subsections (1) and (3) in their entirety. The motion was seconded by Rep. Mercer. Rep. Cobb feels that the word "terrorists" is too broad. Rep. Keyser spoke against the amendment to delete subsection (3). Rep. Mercer feels that it would be a good idea to delete this material because it makes the bill more clear cut. Upon request, the motion to amend by deleting these two subsections was divided. The question was called on the motion to delete subsection (1) on page 9, and it failed on a voice vote; the question was called on the motion to delete subsection (3) on page 10, and that motion failed on voice vote.

Rep. Rapp-Svrcek moved that SB 453 BE TABLED. The motion was seconded by Rep. Darko and carried 11-7. (See roll call vote.)

ACTION ON SENATE BILL NO. 116: Action on SB 116 commenced. Rep. Hammond moved that SB 116 BE CONCURRED IN AS AMENDED. (Amendments were placed on the bill at the last hearing.)

Rep. Krueger spoke against the motion; he said the bill as it is presently written has too many constitutional problems because we are mandating that the Courts place a surcharge on these types of fines. Rep. Addy said as a co-sponsor of SB 116, he supports the concept of SB 116; however, he admitted he was having the same reservations that Rep. Krueger is having with regards to the funding mechanism of this bill. That is the reason why he moved to amend the bill to include the non-severability clause. Rep. Addy said he intended to move to table the bill later. Rep. Mercer said he would second that motion at the appropriate time although he doesn't feel that it is unconstitutional.

Rep. Gould moved the following amendment as proposed by the Missoula County Attorney:

Page 3, line 3.
Following: "treasurer."
Strike: remainder of subsection (4) in its entirety.
Insert: "On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case and the greater of $20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."

Rep. Hammond seconded the motion, and it carried on a voice vote.

Rep. Gould further moved to amend page 7, lines 1 through 22 by reinserting the language that was striken in the Senate and beginning on line 10 of page 8 by reinserting the stricken language through page 9. In addition, on lines 2, 7, 12 and 15 in front of "county attorney" insert "part-time." The motion was seconded by Rep. Hammond. The question was called, and the motion carried on a voice vote.

Rep. Miles moved to amend page 6, line 8, strike "base" twice; page 6, line 9 following "attorney." insert "A county attorney who is a part-time official for a county of the fourth. fifth, sixth or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney." The motion was seconded by Rep. Hammond and carried on a voice vote. (See copy of amendments that were adopted up to this point.--Exhibit A)

Rep. Addy moved that SB 116 BE TABLED. The motion was seconded by Rep. Mercer and carried 10-8. (See roll call vote.)

ACTION ON SENATE BILL NO. 446: SB 446 was referred to the House Judiciary Committee due to some problems that were brought up on the floor. Parties involved proposed some amendments to SB 446 which have been reviewed by Rep. Addy, Rep. Mercer, Rep. Krueger, and Rep. Hannah. These amendments would on page 2, line 23 strike "Such possession placed a burden on the person to remove the effect of such FACT as a circumstance to be considered with all other evidence presented at trial." The insert: "Possession of a dairy case, egg basket, or shopping cart shall not constitute proof of the commission of the offense of unlawful appropriation of retailer property. Such fact will place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all evidence pointed to his guilt." Rep. Hannah asked Brenda Desmond if that

EXHIBIT A
3/27/85 (executive sess:
SB 116

Amendements to SB 116:

1. Page 1, line 24.
Following: "~~deputies~~"
Insert: ", and providing longevity pay for part-time county attorneys and for deputy county attorneys"

2. Page 2, line 10.
Following: "imposed by"
Strike: "all courts of original jurisdiction"
Insert: "district courts and justices' courts"

3. Page 3, line 3.
Following: "treasurer."
Strike: remainder of subsection (4) in its entiretv.
Insert: "On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case and the greater of $20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."

4. Page 4, line 1.
Following: "~~7-4-2503-(3)(d).~~"
Insert: "such salaries include the longevity increases provided by 7-4-2503 (3)(d)."

5. Page 6, line 7.
Following: "COUNTY OF THE"
Insert: "first,"

Following: "SECOND"
Insert: ","

6. Page 6, line 8.
Strike: "base" twice

7. Page 6, line 9. "attorney."
Following: "A county attorney who is a part-time official for a county of the fourth, fifth, sixth or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney."

8. Page 7, following line 22.
Insert: "(d) (i) After completing 4 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as county attorney or deputy county attorney. After completing 5 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as county attorney or deputy county attorney and for each year of service thereafter up to completion of the 11th year of

service, each part-time county attorney or deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) If a part-time county attorney has formerly served as deputy county attorney, his years of service as deputy must be included in the calculation of the longevity increase provided in this subsection (3)(d).

(iii) The years of service as a county attorney or deputy county attorney accumulated prior to [the effective date of this act] must be included in the calculation of the longevity increase."

9. Page 8, following line 9.
Insert: "Section 4. Section 7-4-2505, MCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;
(b) clerk of the district court;
(c) treasurer;
(d) assessor;
(e) county attorney;
(f) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1) , excluding longevity payments provided in 7-4-2503(3)(d), may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.""

Renumber: subsequent sections.

10. Page 9, following line 10.
Insert: "NEW SECTION. Section 5. Non Severability. It is the intent of this legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid."

Senate Bill 116 Amendment

Rewrite subsection (4) of Section 1 (p. 2, lines 22025 and p. 3 lines 1 to 7) to read as follows:

(4) The charges collected under subsection (1) must be deposited with the local government finance officer or treasurer. On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case [redacted] and the greater of $20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section.

SENATE BILL NO. 116

INTRODUCED BY AKLESTAD, GOULD, MENAHAN, KEENAN, HALLIGAN, PINSONEAULT, KOLSTAD, HART, ADDY, LORY, MCCALLUM, HOLLIDAY, ABRAMS, IVERSON, HAFFEY, SCHYE, KOEHNKE, REAM, JANET MOORE, GALT

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REVISING--THE--PAY STRUCTURE-FOR-PROSECUTING-ATTORNEYS;~~ ADJUSTING THE SALARY OF PART-TIME COUNTY ATTORNEYS; REQUIRING THE STATE TO PAY ONE-HALF OF THE SALARY OF NO MORE THAN TWO AUTHORIZED DEPUTY COUNTY ATTORNEYS; ~~PROVIDING--LONGEVITY--PAY---FOR---COUNTY ATTORNEYS--AND-THEIR-DEPUTIES;~~ PROVIDING FUNDING BY IMPOSING A CHARGE ON PERSONS CONVICTED OF CRIMINAL OFFENSES OR WHO FORFEIT BOND OR BAIL; AMENDING SECTIONS 7-4-2502, AND 7-4-2503, ~~AND-7-4-2505,~~ MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the purpose of this act is to maintain and improve the quality of the prosecution function in Montana by adjusting the salary of part-time county attorneys, AND requiring the state to pay one-half of the salary of the TWO deputy county attorneys authorized by 7-4-2703, ~~---and providing--longevity--pay--for--county--attorneys--and--their deputies~~; and

WHEREAS, it is appropriate that necessary funding be derived from a charge to be assessed upon persons convicted of a crime or who forfeit bail or bond, thus providing that costs of maintaining and improving the quality of the prosecution function will be borne, in part, by those who necessitate the operation of the criminal justice system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for a criminal offense or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $10 in each misdemeanor case; and

(b) the greater of $20 or 10% of the fine levied in each felony case.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and may not be used in determining the jurisdiction of any court.

THIRD READING

(4) The charges collected under subsection (1) must be deposited with the local government finance officer or treasurer. The finance officer or treasurer shall record the amount of charges collected that are on deposit with him. On or before the last day of the month following each calendar quarter, the finance officer or treasurer shall remit funds collected during the preceding quarter to the state treasurer for deposit in the state general fund. A local government may retain 10% of funds collected to be deposited in its general fund to cover costs of administering this section.

Section 2. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The ~~salary~~ salaries of the county attorney ~~is~~ and deputy county attorneys authorized by 7-4-2703 are payable monthly, with THE SALARIES OF THE COUNTY ATTORNEY AND NO MORE THAN TWO DEPUTIES PAYABLE one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. ~~Such salaries---include---the--longevity--increases--provided--by~~

~~7-4-2503(3)(d);~~

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney or within 30 days after the appointment of a deputy county attorney authorized by 7-4-2703, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, ~~part-time---county---attorney;~~ county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal

year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

~~(c) In counties with a population less than 30,000 the county attorney who is a part-time official shall receive, in addition to the salary based upon subsection (1), the sum of $1,200 per year.~~

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500. In counties with a

population less than 30,000, the county attorney who is a part-time official ~~for a county of the first, second, third, fourth, or fifth class is entitled to receive an annual base salary equal to 60% of the annual base salary of a full-time county attorney. A county attorney who is a part-time official for a county of the sixth or seventh class~~ FOR A COUNTY OF THE SECOND OR THIRD CLASS is entitled to receive an annual ~~base~~ salary equal to ~~50%~~ 60% of the annual base salary of a full-time county attorney.

~~(d)~~(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.

(d)--(i)-After--completing-4-years-of-service-as-county attorney-or-deputy-county-attorney,-each-county-attorney--or deputy--county-attorney-is-entitled-to-an-increase-in-salary of-$1,000-on-the--anniversary--date--of--his--employment--as county--attorney-or-deputy-county-attorney;--After-completing 5-years-of-service--as--county--attorney--or--deputy--county attorney,--each-county-attorney-or-deputy-county-attorney-is entitled-to-an-additional-increase-in-salary--of--$1,500--on the--anniversary--date-of-his-employment;-After-completing-6 years--of--service--as--county--attorney--or--deputy--county attorney--and--for--each--year--of--service-thereafter-up-to completion-of-the-11th-year-of-service,-each-county-attorney or-deputy-county--attorney--is--entitled--to--an--additional annual-increase-in-salary-of-$500;

(ii)-If-a-county-attorney-has-formerly-served-as-deputy county--attorney,--his--years--of--service-as-deputy-must-be included--in--the--calculation--of--the--longevity--increase provided-in-this-subsection-(3)(d);

(iii)-The--years--of--service--as--a-county-attorney-or deputy-county-attorney-accumulated-prior-to--(the--effective date-of-this-act)-must-be-included-in-the-calculation-of-the longevity-increase;

(e)(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population

increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section-4:--Section-7-4-2505,-MCA,-is-amended-to--read:

"7-4-2505:--Amount--of--compensation--for--deputies--and assistants:--(1)-Subject-to-subsection-(2),--the--boards--of county--commissioners--in--the-several-counties-in-the-state shall-have-the-power-to-fix--the--compensation--allowed--any deputy-or-assistant-of-the-following-officers:

(a)--clerk-and-recorder;

(b)--clerk-of-the-district-court;

(c)--treasurer;

(d)--assessor;

(e)--county-attorney;

(f)--auditor;

(2)--(a)-The--salary-of-a-deputy-or-an-assistant-listed in-subsection-(1),-excluding-longevity-payments-provided--in 7-4-2503(3)(d),- may--not--be-more-than-90%-of-the-salary-of the-officer-under-whom-such-deputy-or-assistant-is--serving;

~~(b)--Where--any--deputy--or-assistant-is-employed-for-a period-of-less-than-1-year,-the-compensation-of-such--deputy or-assistant-shall-be-for-the-time-so-employed,-provided-the rate--of--such--compensation--shall--not-be-in-excess-of-the rates--now--provided--by--law--for--similar---deputies---and assistants-except-as-provided-herein.~~

~~(c)--Deputy--assessors'--salaries--shall-be-the-same-as paid-the-deputy-clerk-and-recorder.~~"

NEW SECTION. Section 4. Effective date. This act is effective July 1, 1985.

-End-

Akelstad Amdt

AMEND SB 116, Third Reading Copy:

1. Page 6, line 9.
Following: "attorney."
Insert: "A county attorney who is a part-time offical for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual base salary equal to 50% of the annual base salary of a full-time county attorney."

Stillwater	P	3.5		15,760
Sweet Grass	P	~~12~~	2	13,872
Teton	P	~~3.5~~	2	15,850
Toole	P	20		15,760
Treasure	P	~~2~~	.5	13,401
Valley	F	~~29.5~~	2	36,751
Wheatland	P	~~1.5~~	.5	13,680
Wibaux	P	4		15,350
Yellowstone	F	11.5		36,751

*Blank spaces indicate no response

[1]Source: Central Services Division, Department of Justice